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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9
10 JOHN E. CLARK,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA,

14 Defendant.

Case No. 2:09-CV-02021-KJD-GWF

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16 **ORDER**

17 Currently before the Court is Defendant's Motion to Dismiss (#12). In response, Plaintiff
18 filed two Motions to Extend Time (##14, 17) which were both granted. (See ##16,19). The
19 Government filed Responses of non-opposition to the Motions to Extend Time (see ##15, 18).

20 Per its Orders granting extensions of time, (##17, 19), the Court specifically allowed Plaintiff
21 additional time in which to provide an affidavit of merit as required under Nevada law. The Court
22 cautioned Plaintiff that his "failure to do so [would] result in dismissal of the action." (#17). The
23 Court's second Order granting extension of time allowed Plaintiff until November 16, 2010, in which
24 to provide the required affidavit of merit, and again cautioned Plaintiff that his "failure to do so
25 [would] result in dismissal of the action." (See #19). To date, Plaintiff has failed to provide an
affidavit of merit as required.

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1 Plaintiff's pro se complaint brings one claim of medical malpractice against the United States
2 of America under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2671, et seq, alleging that the
3 Veteran Affairs medical providers at the Southern Nevada System together with East Orange
4 Veterans Affairs Medical Center in New Jersey, failed to diagnose and heal a left hip fracture and
5 post-traumatic hip osteoarthritis.

6 Claims brought pursuant to the Federal Tort Claims Act are governed by the substantive law
7 of the state where the claim arose. The substantive law that applies to this action is N.R.S. §
8 47A.071, which requires a district court to dismiss an action without prejudice if the action is filed
9 without an affidavit of merit. Here, it is undisputed that in spite of the Court's admonitions, Plaintiff
10 has failed to file an affidavit of merit as required under N.R.S. § 47A.071.

11 Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss (#12) is
12 **GRANTED**, without prejudice.

13 DATED this 17th day of March, 2011.

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Kent J. Dawson
United States District Judge